IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P.No.10372 of 2001
Date of Decision : October 18, 2006.

Sukhdev Singh and others ..... Petitioners

Vs.

Punjabi University, Patiala and another ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.G.S.Bal, Advocate
for the petitioners.

Mr.Deepak Sibal, Advocate
for the respondents.

* * *

P.S.Patwalia, J. (Oral) :

The petitioners were employed in the Punjabi University, Patiala and retired from service on various dates in the years 1998 and 1999. They are aggrieved by a decision taken by the University and circulated vide memo dated 10.07.2001 whereby a special chance for opting for pension was granted to those employees who were in service of the University on 23.02.2000 and denied to the employees like the petitioners who had retired from service prior to the aforesaid date.

The facts leading to the filing of this writ petition are that a pension scheme was enforced by the Punjabi University vide a circular dated 15.07.1992. The scheme was however enforced with effect from 1.4.1990. The scheme was enacted as a statute by the Syndicate of the University. The relevant provisions of the scheme can be culled out as hereunder :-

> ***"1.*** *A Pension fund to be called, The Punjabi University Pension Fund, shall be established for the benefit of the employees eligible under these Statutes by creating a `Corpus' from the University share of the CPF and the State Government will continue to provide to the University the CPF matching contribution in the shape of annual grant-in-aid which will be added to this Fund. This shall come in force on 1.4.90. No additional grant shall be provided by the Punjab Government.*
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> ***2.*** *All whole time paid employees who were beneficiaries under the existing scheme of CPF (Contributory Provident Fund) except those appointed on contract basis, who on attaining the age of retirement indicated in Statute 38, retire on or after 1.4.90, shall be entitled to the benefit of Pension Scheme including Premature Retirement Pension, Commuted Pension etc. and Family Pension to eligible persons in case of death of*

employee on or after 1.4.90, unless they specifically opt out in writing to continue under the CPF Scheme.

3. *The employees of the categories mentioned at 2 above, who joined the University on or after date of issue of the Notification of the Statutes, will be governed by the Pension Scheme only.*

4. *Employees of the category mentioned at 2 above who joined the University before the date of issue of notification will be given an option to be exercised and conveyed to the Registrar's Office within four months in the form (to be prescribed by the V.C.) if they wish to continue under the CPF Scheme or opt to come over to Pension Scheme. If no option is exercised by them within the stipulated period, such employees will be deemed to have come over to the Pension Scheme. The existing Statutes/Ordinances relating to CPF will remain operative for employees who opt to continue to be governed by the CPF Scheme.*

5. *The CPF beneficiaries who were in service on 1.4.90 but have since retired and in whose case retirement benefits have also been paid under the CPF Scheme and in case of such employees as are continuing in service and have obtained loan/advance out of University's share of CPF,*

will also have the option to adopt Pension Scheme provided they refund to the University, the University's contribution (matching) to their Contributory Provident Fund along with interest thereon.

6. *In the case of CPF beneficiaries, who were in service on 1.4.90 but have since retired and in whose case the CPF benefit has not been paid, (on the date of issue of orders) will be allowed the retirement benefits as if they were borne on pensionable establishment, unless they specifically opt out within four months to have their retirement benefits settled under the CPF Scheme.*

7. *In the case of CPF beneficiaries, who were in service on 1.4.90 but have since died, either before retirement or after retirement, the case will be settled in accordance with para 5 or 6 above as the case may be. Options in such cases will be exercised latest within four months by the widow/widower and in the absence of widow/widower by the eldest surviving member of the family who would have otherwise been eligible to the Family Pension under the Family Pension Scheme, if such scheme were applicable (i.e. on the pattern available in the Punjab Government).*

8. *The option once exercised shall be final.***"**

A reading of the aforementioned clauses would show that all whole time paid employees of the University who were earlier beneficiaries under the Contributory Provident Fund (CPF) scheme and who had retired on or after 1.4.1990 were entitled to the benefit of the Pension Scheme unless they specifically give an option in writing to be permitted to continue under the CPF Scheme. In case of employees who joined the University after the notification of the Statute incorporating the Pension Scheme the same were to be governed by the Pension Scheme only. Clause 4 of the Scheme further clarified that the employees as aforementioned were to give their option within four months of the issuance of the notification and in case no such option was exercised by them they would be deemed to have come over to the Pension Scheme. In the case of employees who were in service on 1.4.1990 and in whose case benefits under the CPF Scheme had already been paid or existing employees who had obtained loan/advance out of the University share of the CPF, would also have the option to opt for the Pension Scheme provided they would refund to the University the University's contribution to their Contributory Provident Fund along with interest thereon. Clause 8 of the Scheme expressly stipulated that the option once exercised would be final.

It is not a matter of dispute before me that all the petitioners had specifically given an option at that time to continue under the CPF Scheme and consequently opted out of the Pension Scheme. The petitioners have stated in the petition that very few employees of the University opted for the Pension Scheme. Consequently with a view to involve more people in the Pension Scheme, the University decided to give a further opportunity to its employees to give an option to opt for the Pension Scheme. Accordingly on

14.7.1995 it was circulated to all the employees of the University that a special opportunity was given to them to opt for the Pension Scheme. This opportunity was being granted in terms of the decision taken by the Syndicate in its meeting held on 19.8.1994. The decision was stated to be in relaxation of the provisions of Statute 8. All employees who were in service of the University as on 14.7.1992 or who had retired/expired between 1.4.1990 to 14.7.1992 were granted this opportunity. Again it is the admitted position that the petitioners did not avail of this opportunity to opt for the Pension Scheme.

The petitioners further contend that after the recommendations of the 4th Pay Commission were accepted in 1998 the pension became much more beneficial than the benefits payable under the CPF Scheme. Consequently employees of the University made representations to the University for grant of another special chance for opting for the Pension Scheme. It is stated that the Vice Chancellor of the University constituted a Sub-Committee to examine this matter and make its recommendations with regard to giving benefit of pension to employees who had earlier not opted for the Pension Scheme. The Sub-Committee held a meeting on 24.6.1999 and recommended that those employees who were in service on 24.6.1999 or thereafter, should be given a chance to opt for the Pension Scheme. Since the petitioners had already retired by that time, they, along with other retirees made representations to the Vice Chancellor against the aforesaid recommendation of the Sub-Committee. One such representation had been placed on record as Annexure P-3. The petitioners offered to deposit the amount of Contributory Provident Fund withdrawn by them along with interest. The petitioners contend that these recommendations of the Sub-

Committee were placed in the meeting of the Syndicate of the University but were however not approved. Syndicate decided to constitute another Sub-Committee. The meeting of this Sub-Committee was held on 20.01.2000. This Sub-Committee recommended a cut-off date of 1.1.1996 as the date from which fresh options could be allowed to the employees. The recommendations of the Sub-Committee made in pursuance to meeting dated 20.01.2000 have been placed on record as Annexure P-4. A perusal of the recommendations would show that the Committee examined the financial liabilities of the Pension Scheme and ultimately recommended as hereunder :-

> *"So far as the implementation of this scheme (para 3) is concerned, the Committee is of the opinion that it will be appropriate to give an opportunity w.e.f. 1.1.96, because the revised grades were given to teaching/non-teaching staff w.e.f. 1.1.96.*
>
> *Sd/-* *Sd/-* *Sd/-*
> *Registrar* *Finance Officer* *Dean,Academic Affairs"*

These recommendations were placed before the Syndicate and were considered by the Syndicate in its meeting held on 23.2.2000. After examining the same, the following decision was taken by the Syndicate :-

> *"Considering the above said recommendations, the item is presented before the Syndicate for its perusal and taking decision regarding the date from which option is to be given, in case opportunity for option is allowed.*

> *After consideration, it was resolved to constitute a sub-committee of the following members of the syndicate which shall look into the recommendations of the above committee and submit its recommendations within a period of 15 days to the Vice-Chancellor for taking final decision. The Vice-Chancellor is authorised to take decision for sending these recommendations to the Punjab Govt. at his own level :-*
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> 1. *Dean Academic Affairs*
> 2. *D.P.I.(Colleges) Punjab*
> 3. *Director, Languages (Punjab)*
> 4. *Dr.K.C.Singal*
> 5. *S.Kulwant Singh Grewal*
>
> *No.576-79/Syndicate Dated : 3.3.2000"*

A reading of the portion extracted above would show that on the basis of the recommendations of the Committee the item was presented before the Syndicate for taking its decision as to whether an opportunity for option was to be allowed and if the same was to be granted the date from which the option was to be allowed. The Syndicate decided to constitute a Sub Committee of some members of the Syndicate who would submit their recommendations to the Vice Chancellor for taking a final decision. The Vice Chancellor was authorised to send the recommendations to the Punjab Government at his own level after taking a final decision. As will be referred to in detail hereinafter, under Section 16 of the Punjabi University Act, 1961 (hereinafter referred to as `the Act') every addition or amendment

in a statute requires the approval of the Chancellor. Thus the Syndicate in principal had decided to grant a further option but the date from which the option was to be granted was left to the Vice Chancellor. Essentially therefore the Syndicate delegated its function to decide the cut off date to the Vice Chancellor.

Petitioners contend that on the basis of the aforesaid decision the Sub-Committee held its meeting on 26.6.2000 and recommended that employees who were in service on 23.2.2000 i.e. the date when the Syndicate had taken the decision, were to be given a chance to make a fresh option under the Pension Scheme. Thereafter the University issued a circular Annexure P-9 and circulated that a special chance to opt for Pension Scheme was to be given to employees who were in the service of the University as on 23.2.2000. A reading of this circular would show that after the recommendations had been sent to the Vice Chancellor, the University sent the same to the Chancellor for giving relaxation in Statute 8 of the University Calendar Volume 1 relating to pension and after the Chancellor had approved the same the decision was being circulated.

The result of the aforementioned decision was that employees like the petitioners who had retired from the service of the University prior to 23.2.2000 were denied the chance to opt for the Pension Scheme. The petitioners are such employees who had retired in the year 1998 and 1999 and were therefore denied the aforesaid chance. They are therefore aggrieved by this action of the University. The grievance of the petitioners is limited to the extent that the options should not have been restricted to those employees who were in service of the University on 23.2.2000 but should have also been granted to employees who had retired prior to that

date but after the enforcement of the Pension Scheme. Mr.G.S.Bal, learned counsel appearing for the petitioners has raised a number of arguments in support of the pleas raised in the petition. However in my opinion the present petition can be decided only on one argument raised by the learned counsel. Learned counsel contends that under Section 15 of the Punjabi University Act, the constitution of pension or provident fund is to be by enactment of a Statute. In the present case the University had originally enacted Statutes for the grant of pension. It is contended that under Section 16 of the Act the Syndicate is empowered to make new or additional statute or to amend or repeal the existing statutes. Section 16 mandates that any new statute or addition or amendment of statute would require approval of the Chancellor. Still further learned counsel contends that there is no provision in the Act authorising the Syndicate to delegate this power to any other authority including the Vice Chancellor. Learned counsel submits that once the University had promulgated a statute and given a time schedule for making options and further provided therein by way of Statute 8 that the options were final, any alteration or relaxation in these statutes would amount to an amendment in the same. He states that this amendment has to be by the Syndicate as per the procedure provided in the Act. Learned counsel contends that a fresh date from which options were to be called for would essentially amount to an amendment in the existing statutes. In existing statutes no.2, 4 and 8 such an amendment had to be made by the Syndicate itself. The same could not have been delegated to the Vice Chancellor as there was no specific power of delegation vested with the Syndicate in the Act. He therefore submits that the cut off date fixed by the Vice Chancellor is against the tenor of Section 16 and is liable

to be set aside and the matter has to go back to the Syndicate for a fresh decision.

On the other hand Mr.Sibal learned counsel for the respondents has firstly raised some preliminary objections which shall be dealt with at a later stage. To meet the aforesaid argument raised by the learned counsel, Mr.Sibal contends that a careful reading of Statute 15 would show that it is only the Constitution of the pension fund which is to be as per Statute. Once the fund was constituted the Syndicate can permit amendment in the same by an authority of the University and in the present case a reading of the decision of the Syndicate extracted above would show that amendment had expressly been permitted by the Syndicate. However he further argues that even if he fails on this submission the present is not a case of amendment at all. In the present case only a cut off date has been fixed which would not amount to amendment in the Statute and consequently the rigor of Section 16 would not apply. The Vice Chancellor therefore has validly fixed the cut-off date. However Mr.Sibal could not draw my attention to any provision of the Act permitting the Syndicate to delegate its functions to the Vice Chancellor or to any other authority of the University.

Before examining this contention it is necessary to reproduce herein the relevant Clause of Section 15(c) and Section 16 of the Act. The same read as hereunder :-

"Statutes

15. *Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely :*

xx xx xx xx

(c) *the constitution of a pension or provident fund and the establishment of an insurance scheme for the benefit of the officers, teachers and other employees of the University ;*

xx xx xx xx

The Making, Amendment, Repeal and Operation of Statutes

16. ***(1)*** *On the commencement of this Act, the Statutes of University shall be those set out in the schedule.*

****(2)*** *The Syndicate may, from time to time, make new or additional Statutes or may amend or repeal the Statutes, and*

****(3)*** *Omitted.*

****(4)*** *Omitted.*

****(5)*** *Omitted.*

(6) *Every new Statute or addition to the Statute or any amendment or repeal of Statute shall require the approval of the Chancellor who may sanction, disallow or remit for further consideration.***"**

Having examined the controversy I find merit in the contention raised by the learned counsel for the petitioner. A reading of Section 15 of the Act would show that the constitution of pension or provident fund is

to be by the enactment of a statute. In the present case it is the admitted position that Pension Scheme is a Statute which was enacted by the Syndicate. A reading of the Scheme would show that specific provisions have been made therein for grant of opportunity to employees to opt for the pension fund. The period during which the option is to be made is also prescribed in Statute 4 of the Scheme. Thereafter Statute 8 specifically states that option once exercised shall be final. Statute 8 of the Pension Scheme in its entirety reads as under :-

"8. *The option once exercised shall be final."*

If any further option is to be provided or relaxation in the time during which option was to be submitted is to be granted, in my opinion, it would be a clear case of amendment of the Pension Statutes, at the very least certainly an addition to the existing Statutes. The rigors of Section 16 apply not only for amendment of a statute but even to an addition to the statute. Every addition also has to be by the Syndicate. The same thereafter requires the approval of the Chancellor who may sanction the same, disallow it or remit it for further consideration. I am of the opinion that the University has also understood this to be an amendment or addition to the statute as it is for this reason that the same was sent to the Chancellor for his approval before it was implemented. Thus once there is an amendment or addition to the statute the same would have to be by the Syndicate. In the absence of any power of delegation the Syndicate could not have delegated this function to the Vice Chancellor. Therefore I am of the opinion that cut-off date as fixed by the Vice Chancellor cannot be sustained. The matter would have to go back to the Syndicate where a decision would have to be taken by the Syndicate. In reaching this conclusion I am fortified by the

view taken by a Division Bench of this Court in C.W.P.No.562 of 1989 decided on 17.08.1989 (Dr.Amarjit Singh Dhillon vs. Punjabi University, Patiala and others). Interpreting the Act, the Division Bench of this Court has held as hereunder :-

> *"From the perusal of the above said provisions, it is patent that the Registrar of the University is appointed by the Syndicate which is to appoint Selection Committee for the purpose. The V.C. has been given the limited power of convening the meeting of the Selection Committee. The Syndicate cannot reject the recommendations of the Selection Committee. But if it does not agree with the recommendations, it has to refer the matter to the Chancellor after recording its reasons for disagreement. There is no provision in the Act and the Statutes empowering the Syndicate to delegate any of its functions to the Vice Chancellor. The Syndicate also does not have the power to disagree with the recommendations of the Selection Committee for the post of Registrar. We have noticed that under the Act and Statutes of the University there can be no delegation of power by Syndicate. As such the powers to appoint the Selection Committee cannot be delegated by the Syndicate to the Vice Chancellor. Thus, the authorisation given to the*

> *Vice-Chancellor is contrary to the Statute. The appointment of respondent no.3 made by the Selection Committee, which was not competent to do so, is void. The stand of the University that the Selection Committee was constituted as per practice prevailing in the University is not at all convincing. Practice cannot go contrary to the Statute."*

The Hon'ble Supreme Court in the case of ***The Marathwada University versus Seshrao Balwant Rao Chavan*** reported as ***1989 (1) RSJ 148***, while interpreting the provisions of the Marathwada University Act, 1974, held as hereunder :-

> *"The other infirmity in the said resolution goes deeper than what it appears. The resolution was not in harmony with the statutory requirement. Section 84 of the Act provides for delegation of powers and it states that any officer or authority of the University may, by order, delegate his or its power (except power to make Ordinance and Regulations) to any other officer or authority subject to provisions of the Act and Statutes. Section 24(1) (xii) provides for delegation of power by the Executive Council. It states that the Executive Council may delegate any of its power (except power to make Ordinances) to the Vice-Chancellor or to any other officer subject*

> *to the approval of the Chancellor, (underlining is ours). The approval of the Chancellor is mandatory. Without such approval the power cannot be delegated to the Vice-Chancellor. The record does not reveal that the approval of the Chancellor was ever obtained. Therefore, the resolution which was not in conformity with the statutory requirement could not confer power on the Vice-Chancellor to take action against the respondent."*

The alternative argument of the learned counsel for the respndent-University that mere fixing of a date from which options can be exercised is not an amendment also has no merit. The exercise of option gives rise to substantive right to draw pension. In fact the applicability of the entire scheme is dependent on this option. It is therefore that the scheme contains more than one provisions dealing with the right of option, the period during which it has to be exercised and therefore giving finality to the option. This is therefore an integral part of the Scheme and any change therein would amount to an amendment in the scheme itself.

At this stage it may be clarified that in pursuance to the decision taken by the Syndicate, employees who were serving in the University as on 23.2.2000 may have exercised their option for the Pension Scheme. They would not be adversely affected by the aforesaid determination for the reason that the petitioners are not aggrieved by the decision taken by the Syndicate to grant a further option. Necessarily the decision of the Syndicate to grant option would operate prospectively from

the date when it was taken. The only grievance of the petitioners is that the Syndicate should have decided the issue as to whether or not the retirees should also have been permitted to submit their options for the Pension Scheme by determining a cut off date prior to the date of the decision. It is only this limited controversy which would now have to go back to the Syndicate.

At this stage it would be unfair to the counsel for the respondents if I do not deal with the preliminary objections raised by him. Learned counsel firstly contended that the petitioner should be denied relief in this petition as they have not approached this Court with clean hands. He contends that it has nowhere been stated in the petition that they had specifically exercised an option to continue under the CPF Scheme when the Pension Scheme was originally enacted. He therefore submits that the writ petition should be dismissed on this ground alone. I am of the opinion that this is not a case where the petitioners can be non suited on this ground. Though it is correct that there is no specific averment in the petition stating that they had opted for the CPF Scheme yet the very fact that they are still clamouring for pension makes it obvious that they did opt for CPF Scheme. The provisions of the Pension Scheme were also extracted in the petition. Thus it is not a case of concealment of facts dis-entitling the petitioners to relief on this ground alone.

Learned counsel further contends that the petitioners were also estopped from claiming a further option having once opted for the CPF Scheme. I do not find any merit in this contention as well. Since the University itself had been acceding to the demands of its employees to again give a fresh chance of option and had granted this chance to its employees

not once but two times over, it cannot now turn around and plead estoppel. In the present case the University has granted additional chance to all other employees who had also opted for the CPF Scheme. The only controversy is as to the date from which this chance is to be granted. Thus the petitioners cannot be non suited on this ground as well.

For the reasons aforesaid the present writ petition is allowed. Annexure P-9 is quashed to the extent that it restricts the right of option to those employees who were in service on 23.2.2000 on the basis of a decision to this effect taken by the Vice Chancellor. The matter would now be again placed before the Syndicate for a fresh consideration on the issue as to whether employees of the University who had retired prior to 23.2.2000 are also to be given the right to opt for the Pension Scheme and if so, from which date onwards.

October 18, 2006 (P.S.Patwalia)
monika Judge